

**WAUKESHA COUNTY BOARD OF ADJUSTMENT
SUMMARY OF MEETING**

The following is a Summary of the Board of Adjustment Meeting held on Wednesday, May 13, 2009, at 6:30 p.m. in Room AC 255/259 of the Waukesha County Administration Center, 515 W. Moreland Blvd., Waukesha County, Wisconsin, 53188.

BOARD MEMBERS PRESENT: Ray Dwyer
Tom Day
Nancy M. Bonniwell
Rob Schuett (alternate)

BOARD MEMBERS ABSENT: Bob Bartholomew
Walter Schmidt

SECRETARY TO THE BOARD: Nancy M. Bonniwell

OTHERS PRESENT: Mary E. Finet, Senior Land Use Specialist
Peggy Tilley, Senior Land Use Specialist
Scott & Diane Stacey, BA09:010, owners
David Hoffman, BA09:010, designer/builder
Atty. Terence P. Cahill, BA09:010, representing the owners
Claire Cucinello, BA09:010, neighbor
Atty. Brad Dagen, BA09:010, representing Claire Cucinello
Terry Leaman, BA09:010, neighbor
Bob Sokolowicz, BA09:010, neighbor
Mary Jo Lange, BA09:010, neighbor
Rob and Ann Waite, BA09:011, petitioners
Mike Perrone, BA09:012, owner
Leslie A. Day, Sutter Day Architects, Inc., BA09:012, architect
Brian Vorpapel, Frontier FS Cooperative, BA09:013, petitioner
James Nelson, BA09:015, contractor

The following is a record of the motions and decisions made by the Board of Adjustment. Detailed minutes of these proceedings are not produced, however, a taped record of the meeting is kept on file in the office of the Waukesha County Department of Parks and Land Use and a taped copy is available, at cost, upon request.

SUMMARIES OF PREVIOUS MEETINGS:

Mr. Day *I move to approve the Summary of the Meeting of April 8, 2009, with the following change on Page 8:*

In the motion regarding the request of Scott and Diane Stacey (BA09:010), the Summary should indicate that the motion was carried with four yes votes, with Mr. Dwyer voting no.

The motion was seconded by Mr. Schuett and carried unanimously.

NEW BUSINESS:

BA09:010 SCOTT AND DIANE STACEY - Adjourned from April 8, 2009:

Ms. Bonniwell

*I move to **approve** the request for variances from the floor area ratio and remodeling a non-conforming structure in excess of 50% of its fair market value as well as to **approve** a special exception from the offset requirements of the Ordinance to allow the construction of a second story addition to the existing residence with the removal of the screen porch and no covered entryway addition. The approval would be subject to the conditions recommended in the Staff Report, with the additional condition that a detailed drainage and landscape plan must be submitted.*

The motion was seconded by Mr. Schuett. The motion failed with two yes votes and two no votes. Mr. Day and Mr. Dwyer voted no.

Mr. Dwyer

*I move to **deny** the request for a floor area ratio variance and an offset special exception to permit the petitioners to expand the second story of their residence, but **approve** a variance to remodel a non-conforming structure in excess of 50% of its fair market value to permit the petitioners to remodel, but not to expand, their residence, in accordance with the staff's recommendation, as stated in the Staff Report and for the reasons stated in the Staff Report.*

The motion was seconded by Ms. Bonniwell and carried unanimously.

The Planning and Zoning Division staff's recommendation was for **denial** of the request for a variance from the floor area ratio requirement and **denial** of the request for a special exception from the offset requirement, but **approval** of a variance to remodel a non-conforming structure in excess of 50% of its fair market value, subject to the following conditions:

1. Prior to the issuance of a Zoning Permit, the Environmental Health Division must certify that the existing septic system is adequate for the proposed remodeling, or a sanitary permit for a new waste disposal system must be issued and a copy furnished to the Planning and Zoning Division staff.
2. Prior to the issuance of a Zoning Permit, a complete set of plans for the proposed remodeling, must be submitted to the Planning and Zoning Division staff for review and approval.
3. Prior to the issuance of a Zoning Permit, a detailed cost estimate must be submitted to the Planning and Zoning Division staff for the proposed remodeling.

The reasons for the recommendation, as stated in the Staff Memorandum, are as follows:

The approval of the request for a variance from the remodeling a non-conforming structure in excess of 50% of its fair market value will allow the petitioner to be able to remodel the existing structure. As recommended, no expansions to the structure will be permitted. It is the opinion of the Planning and Zoning Division staff that the interior remodeling will allow the petitioners to update and maintain the structure and will not adversely affect the public health and welfare and will be in keeping with the characteristic of the neighborhood.

The applicant has failed to demonstrate, as required for a variance, that denial of the requested variance from the floor area ratio requirements would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.

The property is currently being used for residential purposes. A previous owner was granted variances in 1992 to significantly expand the cottage that previously existed on the property. The variances were granted to bring the size of the residence in compliance with the minimum house size requirements of the Ordinance. The Board, at the time, stated that the approval of the variances would result in a reasonable use of the non-conforming lot. It should be noted that in 1993, variances were granted to allow the construction of a new residence on the similarly sized adjacent lot to the west of the subject property. The variances allowed the construction of a residence with 864 sq. ft. on the first floor, 643 sq. ft. on the second floor and a 672 sq. ft. attached garage (2,179 sq. ft. total). To allow an expansion to the existing residence on the subject property would not be in keeping with the characteristic of the neighborhood.

Although the proposed addition will be located no closer to the side lot lines than the existing residence, it will significantly increase the size of the structure and will increase the bulk and height of the residence that is already located too close to the side lot lines.

The applicant has indicated that a hardship is established by a light on the neighbor's deck to the west shining into the master bedroom window on the first floor of the residence and by noise and traffic from the private right-of-way to the east. They have indicated that by moving the master bedroom to the upper level it will lessen the effects of these things. However, the proposed plan indicates that there will still be a bedroom on the first floor of the residence if the addition and remodeling take place as proposed. Furthermore, the master bedroom is currently on the west side of the residence, the staff fails to see how moving the bedroom to the upper level and adding windows to the master bedroom on the lakeside of the residence will eliminate the noise and traffic issue from the private right-of-way. It seems that this would compound the problem. In addition, the private right-of-way was in place prior to the owners purchasing of the property. This was a pre-existing condition of the site. The owner has indicated that they would like to keep the screen porch on the lakeside of the residence because of several large black walnut trees that are located along the east lot line. The owner has indicated to staff that the walnuts often fall on the screen porch and that the enclosure is necessary to protect the deck. The staff feels that if the Board were inclined to allow the addition to the residence that the removal of the illegal screen porch should be required. The staff feels that the walnut trees could be trimmed to help alleviate the problem.

The law requires that the Board analyze a variance request based on the physical limitations of the property and not the personal circumstances or desires of the property owner. It is the opinion of the Planning and Zoning Division staff that there are no unique physical limitations on the property that prevent the property owner from using the property for a permitted purpose without the expansion of the residence requested herein. It should be noted, however, that the staff is aware that the property does not currently have a garage. If the owner or a future owner were to apply for variances to build a reasonably sized garage on the property, the staff may consider recommending in favor of such an addition to the property subject to the removal of the existing sheds and the screen porch.

BA09:011 ANITA MILLER (Owner), ROB AND ANN WAITE (Petitioners):

Mr. Day *I move to **approve** the request, in accordance with the staff's recommendation, as stated in the Staff Report, for the reasons stated in the Staff Report.*

The motion was seconded by Mr. Dwyer and carried unanimously.

The Planning and Zoning Division staff's recommendation was for **approval** of the request for variances from the offset requirement of the Waukesha County Shoreland and Floodland Protection Ordinance, to authorize the deck that was constructed without a Zoning Permit in 1999 and rebuilt in 2007, and to authorize the 1999 addition to have a non-conforming offset from the west lot line.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

Variances require a demonstration that denial of the variances would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. Reconfiguring the deck to meet the 18 ft. offset requirement from the west lot line would be unnecessarily burdensome, as that would require the deck, which provides access to a patio door, to terminate in the middle of the patio door, which would be awkward and not aesthetically pleasing and could result in a safety hazard. The discrepancy between the apparent lot line (fence line) and the actual lot line was not known in 1999, when the variance for the addition to the residence was granted and the Zoning Permit was issued for the addition to the residence. The addition was constructed in good faith, in what was thought to be a conforming location, and conformance with the offset requirement would be unnecessarily burdensome, as that would require the removal of a significant portion of the addition.

The discrepancy between the apparent lot line (fence line) and the actual lot line is a unique property feature that supports the issuance of the requested variances. Both the deck and the addition constructed in 1999 appear to be conforming structures, when viewed with respect to the apparent lot line (fence line). They do not adversely affect the adjacent property and are not contrary to the public interest. Therefore, approval of the requested variances from the offset requirement is in conformance with the purpose and intent of the Ordinance.

BA09:012 MIKE PERRONE (Owner), LESLIE A. DAY, (Architect):

Mr. Day noted for the record that he is not related to Leslie A. Day, the architect for this project.

Mr. Schuett

*I make a motion to **deny** the request for variances from the road setback, floor area ratio and open space requirements to permit the construction of the proposed single-family residence with an attached garage and deck, but **approve** variances from the road setback, floor area ratio, and open space requirements of the Waukesha County Shoreland and Floodland Protection Ordinance, to permit the construction of a slightly smaller single-family residence, with an attached garage and deck, in accordance with the staff's recommendation, as stated in the Staff Report and for the reasons stated in the Staff Report, with the second sentence of Condition No. 7 changed to read as follows.*

"The combined area of the first floor of the residence, including any covered porches or entries, and the attached garage may be no more than 2,098 sq. ft."

The motion was seconded by Ms. Boniwell and carried unanimously.

The Planning and Zoning Division staff's recommendation was for **denial** of the request for variances from the road setback, floor area ratio, and open space requirements of the Waukesha County Shoreland and Floodland Protection Ordinance, to permit the construction of the proposed single-family residence with an attached garage and deck, but **approval** of variances from the road setback, floor area ratio, and open space requirements of the Waukesha County Shoreland and Floodland Protection Ordinance, to permit the construction of a slightly smaller single-family residence, with an attached garage and deck, subject to the following conditions:

1. A Plat of Survey, showing the entire width of the Lake Drive right-of-way in the area abutting the subject property, must be prepared by a registered land surveyor so that it can be determined if the edge of the road right-of-way is also the base setback line. The Plat of Survey must be submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a Zoning Permit. The Plat of Survey shall also show the 100-year flood elevation line (elevation 875.1 ft. amsl) and the location of the new residence, attached garage and deck, with at least two corners of the residence staked in the field.
2. The new residence and attached garage must be located at least 33 ft. from the centerline of the Lake Drive right-of-way, as measured to the outer edge of the wall, provided the overhang does not exceed two (2) ft. in width. If the overhang exceeds two (2) ft. in width, the building must be located so that the outer edge of the overhang is at least 33 ft. from the centerline of the Lake Drive right-of-way. This will place the structure outside of the 66 ft. wide established road right-of-way of Lake Drive.
3. The new residence and attached garage must be located at least 10 ft. from the east and west lot lines, at least 75 ft. from Upper Oconomowoc Lake, and at least 50 ft. from the 100-year

floodplain, as measured to the outer edges of the walls, provided the overhangs do not exceed two (2) ft. in width. If the overhangs exceed two (2) ft. in width, the building must be located so that the outer edges of the overhangs conform with the offset/setback requirements noted above.

4. Any decks or patios adjacent to the new residence must be located at least 6 ft. from the east and west lot lines, at least 75 ft. from Upper Oconomowoc Lake, and at least 50 ft. from the 100-year floodplain.
5. Any sidewalks, walkways, or stairs located along the sides of the residence must be at least three (3) ft. from the side lot lines. Any new sidewalks, walkways or stairs located within the 75 ft. shore setback area may be no more than three (3) ft. in width.
6. No retaining walls will be permitted within 75 ft. of the lake or within five (5) ft. of the side lot lines.
7. The new residence and attached garage must be reduced in size so the total floor area, including the first and second floors of the residence, any covered porches or entries, and the attached garage, does not exceed 2,500 sq. ft. The combined area of the first floor of the residence, including any covered porches or entries, and the attached garage may be no more than 2,000 sq. ft. The new residence must have a first floor area of at least 850 sq. ft. and it must have an attached garage of at least 400 sq. ft. Based on a lot area of 12,602 sq. ft., this will result in a maximum floor area ratio of approximately 19.8% and a minimum open space of approximately 10,602 sq. ft. *Note: If the Plat of Survey required above indicates that the edge of the road right-of-way is not the base setback line of Lake Drive, the actual lot area will be slightly less than 12,602 sq. ft., which will result in a slightly higher floor area ratio and slightly less open space than noted above.*
8. Prior to the issuance of a Zoning Permit, a complete set of house plans, in conformance with the above conditions, must be submitted to the Planning and Zoning Division staff for review and approval.
9. The non-conforming cottage must be razed, prior to the issuance of a Zoning Permit for the new residence.
10. In order to ensure the construction of a new residence does not result in adverse drainage onto adjacent properties, a detailed Grading and Drainage Plan, showing existing and proposed grades, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a Zoning Permit. The intent is that the property be graded according to the approved plan, and also to provide that the drainage remain on the property or drain to the lake, and not to the neighboring properties or the road. The following information must also be submitted along with the Grading and Drainage Plan: a timetable for completion, the source and type of fill, a complete vegetative plan including seeding mixtures and amount of topsoil and mulch, an erosion and sediment control plan, and the impact of any grading on stormwater and drainage. This Grading and Drainage Plan may be combined with the Plat of Survey required in Condition No. 1.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

Variances require a demonstration that denial of the variances would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. Conformance with the road setback, floor area ratio and open space requirements would be unnecessarily burdensome, especially if it is determined that the edge of the road right-of-way is not also the base setback line, which will result in a reduced lot depth and a smaller lot area than indicated in the application. Therefore, hardships exist, due to the size and configuration of the lot, which justify some relief from the road setback, floor area ratio, and open space requirements, but not to the extent requested, as variances should grant only the minimum relief necessary for a reasonable use of the property.

The approval of variances from the road setback, floor area ratio, and open space requirements of the Waukesha County Shoreland and Floodland Protection Ordinance, with the recommended conditions, will allow the construction of a reasonably-sized house for the lot, which will be in keeping with other development in the area and which will not adversely affect the neighboring properties or the lake. Further, the approval of variances from the road setback, floor area ratio, and open space requirements, with the recommended conditions, will facilitate the elimination of three extremely non-conforming structures and a non-conforming use, which is in the public interest and also in conformance with the purpose and intent of the Ordinance.

BA09:013 FRONTIER FS COOPERATIVE:

Mr. Day

I move to approve the request, in accordance with the staff's recommendation, as stated in the Staff Report, for the reasons stated in the Staff Report, subject to the three recommended conditions, with Condition No. 2 revised to read as follows:

"Prior to the issuance of a Zoning Permit, a Plat of Survey showing the staked-out location of the proposed warehouse building, in conformance with Condition No. 1, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval."

The motion was seconded by Mr. Dwyer and carried unanimously.

The Planning and Zoning Division staff's recommendation was for approval of the request for a variance from the offset requirement of the Waukesha County Zoning Code, to permit the construction of a 60 ft. x 72 ft. warehouse building, subject to the following conditions:

1. The warehouse building must be located at least 10 ft. from the southeast lot line and at least 2 ft. from the southwest lot line, as measured to the outer edge of the wall.

2. Prior to the issuance of a Zoning Permit, a Plat of Survey showing the staked-out location of the proposed warehouse building, in conformance with the above condition, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval.
3. A revised Site Plan/Plan of Operation must be reviewed and approved by the Town of Oconomowoc and by the Waukesha County Department of Parks and Land Use - Planning and Zoning Division staff. All pre-requisite conditions of those approvals must be complied with and the Site Plan/Plan of Operation Permit issued, prior to the issuance of a Zoning Permit for the new warehouse building.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

Variances require a demonstration that denial of the variances would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. It would be unnecessarily burdensome to deny the requested offset variance and require the new warehouse building to be located 10 ft. from the rear lot line, as that would result in only a small portion of the new warehouse building being adjacent to the existing concrete loading dock, making it difficult to utilize the existing loading dock to service the new warehouse building.

In addition, the property is in an industrial area and the requested offset variance is from a lot line that is a common lot line with a railroad. Therefore, granting the requested offset variance will not adversely affect the neighboring property and is not contrary to the public interest. The proposed warehouse building will be farther from both the side and the rear lot line than the building it is replacing and it will have the same offset from the rear lot line as the fertilizer warehouse building on the opposite side of the office/warehouse building that was constructed following the grant of a similar variance request in 1994 (File No. BA94:139). Therefore, the approval of a variance from the offset requirement, with the recommended conditions, is in conformance with the purpose and intent of the Ordinance.

BA09:015 DON AND SUSAN JESPERSEN (Owners) JAMES NELSON (Contractor):

Ms. Bonniwell

*I move to **approve** the request for a special exception, for the reasons stated by the applicant and as set forth in the Staff Report, with the condition requiring removal of the shed/outhouse, as recommended by the staff in the Staff Report.*

The motion was seconded by Mr. Dwyer and carried unanimously.

The Planning and Zoning Division staff's recommendation was for **approval** of the request for special exceptions from the offset requirement of the Waukesha County Shore land and Foodland

Protection Ordinance, to authorize the carport that was constructed without a Zoning Permit by the previous owner and to authorize the enclosure of that carport, subject to the following condition:

The non-conforming shed/outhouse must be removed from the property, prior to the issuance of a Zoning Permit.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

The carport is no closer to the north lot line than the garage to which it is attached, which requires a special exception, rather than a variance, from the offset requirement. A special exception does not require a demonstration that denial of the request would result in an unnecessary hardship, as does a request for a variance. However, when granting special exceptions, the Board must consider whether the proposed special exception would be hazardous, harmful, noxious, offensive or a nuisance to the surrounding neighborhood by reason of physical, social or economic effects, and the Board may impose such restrictions or conditions they deem necessary for the protection of adjacent properties and the public interest and welfare.

The carport that was constructed by a previous owner and the current proposal to enclose the carport. is not hazardous, harmful, noxious, offensive or a nuisance to the surrounding neighborhood. The garage and carport are well-screened from the view of both adjacent properties. The proposed changes to the detached garage will provide needed additional storage in a building that will be more aesthetically pleasing and will be in keeping with other detached garages on the neighboring properties. Therefore, approval of the requested special exceptions from the offset requirement to authorize the carport that was constructed without permits by the previous owner and to permit the carport to be enclosed is in conformance with the purpose and intent of the Ordinance.

OTHER ITEMS REQUIRING BOARD ACTION:

None

ADJOURNMENT:

Mr. Day *I move to adjourn this meeting at 9:13 p.m.*

The motion was seconded by Mr. Schuett and carried unanimously.

Respectfully submitted,

Nancy M. Bonniwell
Secretary, Board of Adjustment